Remarks

This application has been carefully reviewed in light of the Office Action mailed January 23, 2008. At the time of the Office Action, claims 29-58 were pending in this application all of which were rejected. Applicants have amended claims 29, 30, 34, 35, 39, 40, 45, 53, and 55. No new matter has been introduced by these amendments. Reconsideration of the above-identified application in view of the following remarks is respectfully requested. Applicants do not admit that these amendments were necessary as a result of any cited art or Examiner objection.

Claim Rejections - 35 USC §102

The Examiner rejected claims 29, 40-41, 42, and 56 under 35 U.S.C. § 102(a) as being anticipated by O'Leary, C ("Deutsche Enters Innovative World of Synthetic CLOs," The Investment Dealers' Digest, New York, July 5, 1999) (*O'Leary*). Applicants traverse this rejection because *O'Leary* fails to teach or suggest the pending claims. Reconsideration of the claims is respectfully requested for at least the following reasons.

Pending claim 29 recites, "aggregating and offering financial instruments for sale in the financial markets, the financial instruments having been originated by a plurality of primary originators, the financial instruments being offered by a financing organization on terms that entirely transfer default risk from the primary originators to purchasers of the financial instruments, the transfer of default risk causing a complete disassociation of the primary originator from the offered financial instruments." *O'Leary* fails to teach or suggest pending claim 29 because *O'Leary* merely discloses a collateralized loan obligation program wherein a single loan issuer sells a portfolio of issued debt in the financial market. Furthermore, the loans are sold on the market by the loan issuers. Finally, the loan issuers remain tied to their issued loans after the loans have been marketed for sale. At best, the loan issuers only hedge against default risk, they do not entirely transfer default risk. (see *O'Leary* in at least paragraphs 3 and 7).

Accordingly, the present claim is distinct from *O'Leary* for several reasons. First, the aggregated and offered financial instruments originate from a plurality of primary originators. Second, the financial instruments are offered by a separate entity - a financing organization.

Thus, there are three parties to this transaction: (1) a financial organization, (2) the primary originators, and (3) the purchaser. *O'Leary* merely discloses the loan issuer and the purchaser. Finally, once the financial instruments have been offered by the financial organizations, the primary originators are completely disassociated from the financial instruments. Therefore, there is an entire transfer of default risk from the primary originator to the financial instrument purchasers. For at least these reasons, *O'Leary* does not teach or suggest pending claim 29. Applicants respectfully request the Examiner to favorably reconsider and withdraw the rejection of pending claim 29 (and dependent claims 30-44).

Claim 29-44 and 56 are distinguished from *O'Leary* for other reasons as well. For instance, claim 40 recites, "offering the financial instruments . . . in at least two forms . . . the offering resulting in no recourse by a purchaser to the originator." *O'Leary* fails to teach the pending claim because no where in *O'Leary* is it disclosed that any and all recourse by a purchaser to the originator is removed.

As to claims 41, the claims recites, in relevant part, "the financial instruments backing each pool being held by a bankruptcy-remote entity established by the financing organization." *O'Leary* fails to teach the pending claim because no where in the reference is the pending limitation taught. At best, *O'Leary* discloses a bankruptcy-remote entity established by the loan issuer.

The Examiner has rejected claim 56 under 35 USC § 102 which depends from claim 45 which was rejected under 35 USC §103. The Examiner explicitly states that the limitations of claim 45 are not taught in *O'Leary* (see Office Action, page 3). Therefore, in light of 35 U.S.C. § 102, claim 56 cannot be rejected by virtue of its dependency on claim 45. Furthermore, as will be described below, claim 45 is distinguishable from the prior art and, therefore, claim 56 is patentable for at least the reason stated below as well. Applicants respectfully request the Examiner to favorably reconsider and withdraw the rejection of claim 56.

For at least these reasons, *O'Leary* fails to teach or suggest claim 29 and 40-42, and 56. Applicants respectfully request the Examiner to favorably reconsider and withdraw the rejection of claim 29 (and dependent claims 30-44) and claim 56.

Claim Rejection - 35 USC §103

The Examiner rejected claims 30-32, 34-37, 39, 42, 45, and 50-56 as being unpatentable over the *O'Leary* reference and the knowledge of one skilled in the art. Applicants traverse this rejection because *O'Leary* in combination with the knowledge of one skilled in the art fails to teach or suggest the pending claims as amended. Reconsideration of the claims is respectfully requested for the following reasons.

Claims 30 -32, 34-37, 39, and 42 are patentable based on their dependency from claim 29 (see Remarks above). Claims 30 -32, 34-37, 39, and 42 are also patentable for independent reasons. For example, Claim 30 recites "wherein a tax-neutral financial structure of the financing organization is created based on the cooperative ownership by at least three of the primary originators, no single originator of the ownership cooperative owning 50% or more of the financing organization." The Examiner explicitly states that *O'Leary* fails to teach the pending limitation (see Office Action, page 3). Furthermore, the Examiner states that the differences in the balance of the claims as compared to the prior art are found in nonfunctional descriptive material. Applicants traverse this argument, but, in order to expedite prosecution, have amended the claim to include functional limitations and differences. Nevertheless, the instant limitation is still distinct from *O'Leary* in that no where in the cited reference is there a teaching regarding the tax implications of the collateralized loan program disclosed. Therefore, *O'Leary* fails to teach the pending claim.

Claim 34 recites, in relevant part, "the originators are a cooperative consortium . . . who have agreed to underwriting standards for financial instruments . . . based on a pre-determined tier of credits . . . the underwriting standards facilitating an increase in the volume of sold financial instruments and enhancing investor interest." The Examiner states that the differences in the claim from the prior art are found in nonfunctional descriptive material. Applicants traverse this argument. In order to expedite prosecution, however, the Applicants have amended the claim to include functional differences. Nevertheless, the instant limitation is still distinct from *O'Leary* in that no where in the cited reference is there a teaching regarding the underwriting standards of, nor its effect on, the collateralized loan program disclosed. Therefore, *O'Leary* fails to teach the pending claim.

Claim 35 recites "reducing an incentive among the primary originators to bear associated financial costs of one or more non-performing financial instruments by ensuring that . . . no single originator originated 50% or more of the financial instruments in the pool." The Examiner states that the differences in the claim from the prior art are found in nonfunctional descriptive material. Applicants traverse this argument. In order to expedite prosecution, however, the Applicants have amended the claim to include functional differences. Nevertheless, the instant limitation is still distinct from *O'Leary* in that no where in the cited reference is there a teaching regarding the tax implications of the collateralized loan program disclosed. Therefore, *O'Leary* fails to teach the pending claim.

Claim 39 recites, in relevant part, "contractually committing not to provide any form of credit support for financial instruments . . . the commitment resulting in no recourse by a purchaser to the originator." The Examiner states that the differences in the claim from the prior art are found in nonfunctional descriptive material. Applicants traverse this argument. In order to expedite prosecution, however, the Applicants have amended the claim to include functional differences. Nevertheless, the instant limitation is still distinct from *O'Leary* in that no where in the cited reference is there a teaching that a purchaser of the financial instruments has no recourse against an originator. Therefore, *O'Leary* fails to teach the pending claim.

As to claim 45, Applicants traverse the rejection of the instant claim since *O'Leary* fails to teach or suggest the pending limitations for at least the reasons set forth above with respect to claim 29 and claim 30. Applicants, therefore, for at least these reasons, respectfully request the Examiner to favorably reconsider and withdraw the rejection of claim 45 (and dependent claims 46-58). Furthermore, Applicants respectfully request the Examiner to favorably reconsider and withdraw the rejection of claims 53 and 55 for at least the reasons set forth above with respect to claims 35 and 39, respectively.

Therefore, for at least the reasons set forth above, *O'Leary* fails to teach or suggest claims 30-32, 34-37, 39, 42, 45, and 50-56. Applicant's respectfully request the Examiner to favorably reconsider and withdraw the rejection of the pending claims.

The Examiner rejected claims 38, 43, and 57 as being unpatentable over the *O'Leary* reference and in further view of Official Notice. Applicants traverse this rejection

because neither *O'Leary* nor Official Notice teach or suggest the pending claims as amended. Reconsideration of the claims is respectfully requested for the following reasons.

As admitted by the Examiner, *O'Leary* fails to teach the limitations of these claims (see Office Action in at least page 4). The Examiner has taken Official Notice of these claims in order to make up for *O'Leary*'s deficiency. Applicants traverse the Examiner's Official Notice because the Examiner has failed to adequately show that the pending limitations would be obvious to one of ordinary skill in the art. An Examiner may take Official Notice of a limitation only when "the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known" (MPEP §2144.03A). In other words, the facts must be so well-known that they "defy dispute" (*In re Alhert*, 165 USPQ 418, 420 (CCPA 1970). Furthermore, an Examiner may not rely solely on "common knowledge" in the art without evidentiary support on the record (*Id.*). The Examiner has taken Official Notice on these claims without showing through evidence that the limitations are of "unquestionable demonstration" and that they "defy dispute." Accordingly, the Examiner has failed to meet the appropriate burden for taking Official Notice. Applicants respectfully request the Examiner to favorably reconsider and withdraw the rejection of claims 38, 43, and 57.

The Examiner rejected claims 33, 44, 46-49, and 58 as being unpatentable over *O'Leary* and in further view of Oldfield, et al ("Risk Management in Financial Institutions", Fall 1997) (*Oldfield*). Applicants traverse this rejection. These claims all depend either directly or indirectly from either claim 29 or claim 45. As set forth above, these independent claims are patentable because neither *O'Leary* nor the combination of *O'Leary* and the knowledge of one skilled in the art teach or suggest the limitations of the pending claims. None of the additional references overcome these deficiencies. Furthermore, these dependent claims are patentable not only because they depend either directly or indirectly from claims 29 or 45, respectively, but also for the further limitations that they add which make them separately allowable. As such, Applicants respectfully request the Examiner to favorably reconsider and withdraw the rejection of claims 33, 44, 46-49, and 58.

Applicants do not acquiesce in the Examiner's characterizations of the art. For brevity and to advance prosecution, Applicants may not have addressed all characterizations of the art and reserve the right to do so in further prosecution of this or a subsequent application.

The absence of an explicit response by Applicants to any of the Examiner's positions does not constitute a concession to the Examiner's positions. The fact that Applicants' comments have focused on particular arguments does not constitute a concession that there are not other arguments for patentability of the claims. Applicants submit that all of the dependent claims are patentable for at least the reasons given with respect to the claims on which they depend.

Conclusion

For the foregoing reasons, Applicants believe that the Office Action of September 24, 2007 has been fully responded to. Consequently, in view of the above amendments and remarks, Applicant respectfully submits that the application is in condition for allowance, which allowance is respectfully requested.

The Commissioner is hereby authorized to charge any fee deficiency or credit any overpayments associated with the filing of this Paper to the Deposit Account of Applicants' assignee, Ford Global Technologies LLC, Deposit Account No. 06-1510.

Respectfully submitted,

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